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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205514
Party	Defendant Maker Studios, Inc.
Correspondence Address	APRIL L. BESL DINSMORE & SHOHL LLP 255 E 5TH ST STE 1900 CINCINNATI, OH 45202-1971 april.besl@dinsmore.com
Submission	Answer
Filer's Name	April L Besl
Filer's e-mail	april.besl@dinsmore.com, karen.gaunt@dinsmore.com, sonya.pinner@dinsmore.com
Signature	/april l besl/
Date	07/18/2012
Attachments	Answer to Opposition - ANIMONSTER.pdf (10 pages)(282022 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY, **Opposer** **vs.** **MAKER STUDIOS, INC.** **Applicant.**	**Ser. No. 85/446979** **Opposition No. 91205514**

ANSWER TO NOTICE OF OPPOSITION

Applicant, Maker Studios, Inc (hereinafter "Maker" or "Applicant"), a California corporation with its principal place of business in Culver City, California, applied for the mark ANIMONSTER in Class 25 for "Clothing, namely, shirts, pants, hats, sweatshirts, and shoes." The application was filed on October 17, 2011, and assigned Serial No. 85/446979.

Applicant denies the averment in the introductory paragraph of the Notice of Opposition that the registration of Applicant's trademark ANIMONSTER, subject of application Serial No. 85/446979, will damage Opposer. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments raised in the introductory paragraph of the Notice of Opposition and, therefore, denies the same. Applicant denies each and every allegation contained in the Notice of Opposition unless otherwise admitted or responded to as follows:

1. Applicant admits that on October 13, 2011, Applicant filed an intent-to-use application which was subsequently assigned Serial No. 85/446979 and which sought to register the mark ANIMONSTER in connection with the following

goods in International Class 25: "Clothing, namely, shirts, pants, hats, sweatshirts, and shoes."

2. Applicant is without sufficient knowledge or information to determine the truth or falsity of the remaining facts alleged in Paragraph 2 and therefore denies same.

3. Applicant is without sufficient knowledge or information to determine the truth or falsity of the remaining facts alleged in Paragraph 3 and therefore denies same.

4. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,908,601 for the mark MONSTER ENERGY & Design is owned by an entity identified as Monster Energy Company in connection with "Clothing, namely, t-shirts, hooded shirts and hooded sweatshirts, sweat shirts, jackets, pants, bandanas, sweat bands and gloves; headgear, namely, hats and beanies." Applicant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 4 and therefore denies the same.

5. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 4,036,681 for the mark MONSTER ENERGY is owned by an entity identified as Monster Energy Company in connection with "Non-alcoholic beverages, namely, energy drinks, excluding perishable beverage products that contain fruit juice or soy." Applicant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies the same.

6. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,057,061 for the mark MONSTER ENERGY

is owned by an entity identified as Monster Energy Company in connection with "Fruit juice drinks having a juice content of 50% or less by volume that are shelf stable, carbonated soft drinks, carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not." Applicant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 6 and therefore denies the same.

7. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,044,314 for the mark M MONSTER ENERGY is owned by an entity identified as Monster Energy Company in connection with "Nutritional supplements in liquid form, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not." Applicant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 7 and therefore denies the same.

8. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,044,315 for the mark MONSTER ENERGY is owned by an entity identified as Monster Energy Company in connection with "Nutritional supplements in liquid form, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not." Applicant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 8 and therefore denies the same.

9. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 3,852,123 for the mark MONSTER MIXXD is owned by an entity identified as Monster Energy Company in connection with "Nutritional Supplements" and "Non-alcoholic beverages, namely, carbonated soft drinks; carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; carbonated energy or sports drinks." Applicant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 9 and therefore denies the same.

10. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 4,129,288 for the mark MONSTER REHAB is owned by an entity identified as Monster Energy Company in connection with "Nutritional supplements in liquid form" and "Beverages, namely, non-alcoholic non-carbonated drinks enhanced with vitamins, minerals, nutrients, proteins, amino acids and/or herbs; non-carbonated energy or sports drinks, fruit juice drinks having a juice content of 50% or less by volume that are shelf-stable; all the foregoing goods exclude perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not." Applicant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 10 and therefore denies the same.

11. Applicant admits that the Trademark Office's publicly-accessible TARR database reflects that U.S. Registration No. 4,111,964 for the mark MONSTER REHAB is owned by an entity identified as Monster Energy Company in connection with "Ready to drink tea, iced tea and tea based beverages; ready to drink flavored tea,

iced tea and tea based beverages." Applicant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 and therefore denies the same.

12. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 12 and therefore denies same.

13. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 13 and therefore denies same.

14. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 14 and therefore denies same.

15. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 15 and therefore denies same.

16. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 16 and therefore denies same.

17. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 17 and therefore denies same.

18. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 18 and therefore denies same.

19. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 19 and therefore denies same.

20. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 20 and therefore denies same.

21. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 21 and therefore denies same.

22. Applicant is without sufficient knowledge or information to determine the truth or falsity of the allegations in Paragraph 22 and therefore denies same.

23. Applicant admits that on October 13, 2011, Applicant filed an intent-to-use application which was subsequently assigned Serial No. 85/446979 and which sought to register the mark ANIMONSTER. Applicant is without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 23 and therefore denies same.

24. Applicant admits that its application for ANIMONSTER, assigned Serial No. 85/446979 is in connection with the following goods in International Class 25: "Clothing, namely, shirts, pants, hats, sweatshirts, and shoes." Applicant is without sufficient knowledge or information to determine the truth or falsity of the remaining allegations in Paragraph 24 and therefore denies same.

25. Applicant denies each and every allegation in Paragraph 25.

26. Applicant denies each and every allegation in Paragraph 26.

27. Applicant denies each and every allegation in Paragraph 27.

28. Applicant denies each and every allegation in Paragraph 28.

Applicant denies the allegations contained in the "Wherefore" clause at the end of Opposer's Notice of Opposition.

AFFIRMATIVE DEFENSES

Applicant states as follows for its affirmative defenses:

1. Petitioner fails to state a claim upon which relief can be granted.

2. Applicant's ANIMONSTER mark is sufficiently distinctively different from the MONSTER ENERGY, M MONSTER ENERGY, MONSTER ENERGY & Design,

MONSTER MIXXD and MONSTER REHAB marks referenced by Opposer in the Notice of Opposition so as to avoid confusion, deception or mistake as to the source, sponsorship, association or approval of Applicant's goods.

3. The goods covered by Applicant's ANIMONSTER mark are sufficiently distinctively different from those offered under the MONSTER ENERGY, M MONSTER ENERGY, MONSTER ENERGY & Design, MONSTER MIXXD and MONSTER REHAB marks referenced by Opposer in the Notice of Opposition so as to avoid confusion, deception or mistake as to the source, sponsorship, association or approval of Applicant's goods.

4. The US Patent and Trademark Office Examining Attorney tasked with examining the application for Applicant's ANIMONSTER mark approved the application for publication with no citation to the MONSTER ENERGY, M MONSTER ENERGY, MONSTER ENERGY & Design, MONSTER MIXXD and MONSTER REHAB marks cited in the Notice of Opposition indicating that the Patent and Trademark Office Examiner did not find a conflict between the two marks cited in the Notice of Opposition indicating that the Patent and Trademark Office Examiner did not find a conflict between the two marks.

5. There is no likelihood of confusion between Applicant's ANIMONSTER mark and Opposer's MONSTER ENERGY, M MONSTER ENERGY, MONSTER ENERGY & Design, MONSTER MIXXD and MONSTER REHAB marks as alleged in the Notice of Opposition.

6. Opposer's MONSTER ENERGY, M MONSTER ENERGY, MONSTER ENERGY & Design, MONSTER MIXXD and MONSTER REHAB marks as cited in the Notice of Opposition are not famous under Section 43(c) of the Trademark Act, 15 U.S.C. 1125(c).

7. Applicant's ANIMONSTER mark does not dilute Opposer's MONSTER ENERGY, M MONSTER ENERGY, MONSTER ENERGY & Design, MONSTER MIXXD and MONSTER REHAB marks as cited in the Notice of Opposition.

8. Opposer's mark as reflected in U.S. Registration No. 3,908,601 for M MONSTER ENERGY & Design fails to function as a mark and/or is merely ornamental.

9. Opposer's only owns incontestable registrations for nutritional beverages and supplements, but not for clothing.

Applicant reserves the right to assert additional affirmative defenses as they may become known through the process of discovery.

PRAYER FOR RELIEF

WHEREFORE, Maker Studios, Inc. prays that:

A. This action be dismissed in its entirety with prejudice;

B. That Applicant has such other and further relief as the Board may deem just and proper.

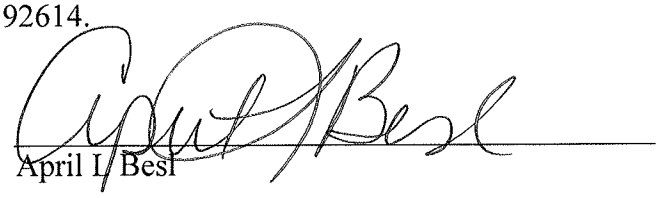
Dated: **July 18, 2012**

April L. Besl
Karen Kreider Gaunt
DINSMORE & SHOHL LLP
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8527-direct
(513) 977-8141-fax
april.besl@dinslaw.com

Attorneys for Applicant
Maker Studios, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by first class mail, postage prepaid, on this 18th day of July, 2012 to Diane M. Reed, Knobbe Martens Olson & Bear LLP, 2040 Main Street, 14th Floor, Irvine, California 92614.



April L. Besl